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MAKING THE JURY JUDGE OF THE LAW AND THE FACT IN RESPECT TO THE DEFENSE OF CONTRIBUTORY NEGLIGENCE IS CONSTITUTIONAL.

The Oklahoma Constitution provides that "the defense of contributory negligence or of assumption of risk shall, in all cases whatsoever, be a question of fact, and shall at all times be left to the jury." This provision has been attacked as being in contravention of the Fourteenth Amendment. The Supreme Court, in a recent case, sustained the provision and holds generally that there is no constitutional right to have a particular matter decided by the Court or by the jury, as the legislature can deprive either of its time-honored jurisdiction in regard to any matter of controversy and confer it upon an altogether different tribunal, as on a commission. Chicago, R. I. & Pac. Ry. Co. v. Cole, 40 Sup. Ct. Rep. 68. The Court's decision is an interesting review of some recent decisions of the Supreme Court, which have narrowly restricted the operation of the Fourteenth Amendment in favor of modern reforms in the creation of new remedies. The Court said:

"The State Constitution was in force when the death occurred and therefore the defendant had only such right to the defense of contributory negligence as that Constitution allowed. The argument that the railroad company had a vested right to that defense is disposed of by the decisions that it may be taken away altogether. Arizona Employers' Liability Cases, 250 U. S. 400, 39 Sup. Ct. 553, 63 L. ed. —; Bowersock v. Smith, 243 U. S. 29, 34, 37 Sup. Ct. 371, 61 L. ed. 572. It is said that legislation cannot change the standard of conduct, which is matter of law in its nature into matter of fact, and this may be conceded; but the material element in the constitutional enactment is not that it called contributory negligence fact, but that it left it wholly to the jury. There is nothing, however, in the Constitution of the United States or its Amendments that requires a state to maintain the line with which we are familiar between the functions of the jury and those of the Court. It may do away with the jury altogether. Walker v. Sauvinet, 92 U. S. 90, 23 L. ed. 678; modify its constitution, Maxwell v. Dow, 176 U. S. 581, 20 Sup. Ct. 448, 494, 44 L. ed. 597; the requirements of a verdict, Minneapolis & St. Louis R. R. Co. v. Bombolis, 241 U. S. 211, 36 Sup. Ct. 595, 60 L. ed. 961, L. R. A. 1917A, 86 Ann. Cas. 1916E, 505; or the procedure before it, Twining v. New Jersey, 211 U. S. 78, 111, 29 Sup. Ct. 14, 53 L. ed. 97; Frank v. Mangum, 237 U. S. 309, 340, 35 Sup. Ct. 582, 59 L. ed. 969. As it may confer legislative and judicial powers upon a commission not known to the common law, Prentis v. Atlantic Coast Line Co., 211 U. S. 210, 29 Sup. Ct. 67, 53 L. ed. 150; it may confer larger powers upon a jury than those that generally prevail."

The remark of Justice Holmes, that the state could have removed the defense of contributory negligence altogether and practically make a defendant liable for an injury caused by the plaintiff's fault, shows how far the Supreme Court is ready to go to uphold the new conceptions of social justice as again individual rights. This was brought out more clearly in the Arizona Employers' Lliability Cases, 250 U. S. 400, 39 Sup. Ct. 553, when the Supreme Court divided five to four on the question whether a state could make a master liable to an action for unlimited damages for an injury not due to any fault on his part. The Supreme Court, held that they had such power, on the ground that a state could impose on any business responsibility for accidents occurring in such business. In other words, a state can make any employer an insurer of the safety of his employers or of the public. The employer transfers the risk to the insurance company and the insurance company spreads or prorates the risk over the whole field of industry, and this final charge is added to the cost of production and thus charged back to the people who buy the goods.

NOTES OF IMPORTANT DECISIONS.

ANNULLING A MARRIAGE FOR FAILURE OF ONE OF THE PARTIES TO KEEP HIS PROMISE TO HAVE A RELIGIOUS CEREMONY.—The Supreme Court of New York (Special Term) seems to be unable to agree on whether it is fraud sufficient to avoid a marriage for a man to marry a Jewish girl by civil ceremony under a promise that later there should be a Jewish ceremony, which promise he refuses to keep.

Justice Chopsey of Kings County in the case of Schachter v. Schachter, 178 N. Y. Supp. 212, 89 Cent. L. J. 451, held that this was not a misrepresentation of an existing essential fact and that therefore the marriage could not be set aside.

In an exactly similar case Justice Cohalen of New York City recently held that this was a false representation without which the plaintiff would not have been married and without which she would not regard herself as married. Rubinson v. Rubinson (Jan. 25, 1920), 62 N. Y. L. J. 1430. The Court said:

"The false and fraudulent representations made by the defendant to the plaintiff were such as to authorize this court to annul the marriage. These misrepresentations were material and elemental, because without them the plaintiff would not have consummated the marriage by cohabitation. Both parties were of the Hebrew faith, and neither the plaintiff nor her mother considered the marriage binding unless performed as required by their religion. They both have testified that they would not have consented to the marriage of it had not been for the defendant's consent to such a ceremonial marriage. The tendency of the courts of this state to relieve an innocent party from a marriage contract induced by fraud and misrepresentation is evidenced by the following decisions: Moore v. Moore, 157 N. Y. Supp. 819; Robert v. Robert, 150 N. Y. Supp. 366; Di Lorenzo v. Di Lorenzo, 174 N. Y. 467; Svenson v. Svenson, 178 N. Y. 158. It is my view that an injustice has been done the plaintiff. She was induced to enter into a marriage with the defendant solely by reason of his false and fraudulent misrepresentations. She has never cohabited with the defendant, nor has she ever lived with him. He has never contributed in any way to her support, and he has now apparently deserted her. Upon the evidence and upon the above authorities the plaintiff is entitled to a decree adjudging her marriage to the defendant null and void. Decision and judgment signed."

However unjust and reprehensible was defendant's attitude in this case, we believe the Court in the Rubinson case failed to take into account the rule that fraud to annul a marriage must be much stronger than in other cases and must be a misrepresentation of an existing fact essential to constitute a proper marriage. A misrepresentation as to whether one has a venereal disease is fraud while a misrepresentation as to one's wealth or social standing is not. So also an unkept promise to do a certain thing in the future cannot be regarded as a misrepresentation. A man might promise to give the wife a million dollars after marriage and she might make such payment a condition of her marriage, but the husband's failure to pay the million dollars would not avoid the marriage.

A girl who wishes to insist on certain conditions to her marriage should see that such conditions are met prior to or at the time of her marriage. When a civil ceremony is performed she should not be heard to say in a court of law that she did not believe or consider herself married until some other ceremony was performed as that would be to plead ignorance of the law and its effect which is a plea which is never allowed.

In such cases there may be a way of escape by showing that neither party regarded the civil ceremony as a marriage ceremony. in analogy with the rule pertaining to mock marriages, but such cases are difficult of proof.

VALIDITY OF PROVISION FOR SURRENDER BY LESSEE IN OIL LEASES ON PAYMENT OF ONE DOLLAR.—There has been much doubt expressed as to whether the usual provision in oil leases for surrender of lease by lessee on payment of one dollar did not make the lease so unilateral as to give the lessors the right to abandon the agreement before the lessee enters upon the performance of the contract. One thing, however, has been settled by the federal courts, and that is, that there will not be one rule on this subject in the federal courts and another in the state court. Washburn v. Gillespie, 261 Fed. 41. In this case the usual five-year lease was made providing for drilling a well within one year, and providing that lessee could surrender lease at any time on payment of one dollar. Oil having been discovered on adjoining land before lessee had made any bona fide attempt to drill, the owners sought to cancel the lease. The Court in holding that the provision for surrender did not make the lease unilateral and that the lessors had no right to cancel the lease, said:

"The third contention is that the surrender clause of the lease, which gives the lessee the right to surrender and terminate the lease at any time, on the payment of $1, makes the lease so unilateral as to give the lessors a right of cancellation which they exercised. The validity and interpretation of this character of surrender clause has been before the courts on several occasions. Guffey v. Smith, 237 U. S. 101, 113, 35 Sup. Ct. 526, 59 L. Ed. 856, settles

the law that this is a kind of question which should be settled by the local law in so far as it affects the validity of the lease. The latest expressions of the Oklahoma Supreme Court favor the validity of such provisions. Northwestern Oil & Gas Co. v. Branine, Okla., 175 Pac. 533; Rich v. Doneghey, Okl., 177 Pac. 86. It is true that these two cases were decided after this case was tried below, and that up to that time the Oklahoma Supreme Court had taken the contrary view. The evidence here shows that a large percentage of the oil and gas leases in Oklahoma, covering millions of acres of land, contain this or similar clauses. There should not be opposed rules of property affecting so many persons and so much property within the same state. These leases should all be valid, or all be invalid, no matter whether they be tested in state or federal courts. Harmony and absence of confusion are desirable. Guided by this pressing need of harmony in decision, by the consideration that this is the character of question where the state courts would be unhesitatingly followed were there no difference in such decisions, by our own view that this clause should be held valid, and by the view, expressed by the Supreme Court concerning such a surrender clause, that 'it is difficult to perceive how it could be declared inequitable', Guffey v. Smith, 237 U. S. 101, 117, 35 Sup. Ct. 526, 59 L. Ed. 856, we shall follow these last decisions of the Oklahoma Supreme Court declaring the surrender clause valid and as applicable to the lessee alone."

DISREGARD OF CORPORATE FORM WHERE CORPORATION IS A MERE CONVENIENCE FOR HANDLING THE INTERESTS OF TENANTS IN COMMON.—It seems that the corporate form does not always carry with it all the usual results of such form of organization. In the recent case of Cleveland Cliffs Iron Co. v. Arctic Iron Co., 261 Fed. 15, the Court held that where two tenants in common owning iron ore land form a corporation to lease and sell the ore, the two stockholders, although directors, are not bound by the rule making directors trustees for the corporations and one of them is not accountable in equity for securing an additional advantage over the other director. The Court in describing this corporation, said:

"Whatever standing plaintiff has to demand the relief sought depends upon a rule of corporate law, and upon the fact that the interests of the parties were represented by stock in a corporation. This corporation, with its equal division of stock between the two beneficial interests and with its four directors, two allotted to each interest, was the convenient form by which the two tenants in common real estate made the estate indivisible by the act of either, and provided that nothing should be done with it without the consent of both. The beneficiaries have continually dealt with the property as tenants in common would do. Any such corporation forms as they observed were of no effect as to their substantial mutual relations. When any step was to be taken, it was not considered at a stockholders' or directors' meeting, but was taken up and decided independently by the two interests. If they agreed, the corporate signature was attached; if they disagreed, nothing was done. When the Cliffs, the owner of one-half, desired a lease, it went directly to the owners of the other half and negotiated. When the Olivers sought a lease, it bargained separately and independently with the owner of each half."

It is interesting to note that the United States Supreme Court has taken a similar position in the case of Chicago Co. v. Minneapolis, 247 U. S. 490, 38 Sup. Ct. 553. That Court said:

"Where stock ownership has been resorted to, not for the purpose of participating in the affairs of a corporation in the normal and usual manner, but for the purpose, as in this case, of controlling a subsidiary company so that it may be used as a mere agency or instrumentality of the owning company or companies, * * * the courts will not permit themselves to be blinded or deceived by mere forms of law, but, regardless of fictions, will deal with the substance of the transaction involved as if the corporate agency did not exist and as the justice of the case may require."

In the Minneapolis case two corporations, for convenience, put their common interests into a third subsidiary corporation which became merely their instrument for doing their business. As the Court said in the principal case, "it is not easy to see why the principle may not apply as well to stockholding individuals as to stockholding corporations, nor why the existence of the corporate shell and corporate forms, without more, should transform what is right into what is wrong."

VALIDITY OF ORDINANCE REQUIRING CONDUCTOR AND MOTORMAN TO OPERATE CARS.—The "one man" car which has been boomed so extensively the last few years seems to be doomed under legislation which has just been held to be constitutional. In the recent case of Sullivan v. City of Shreveport, 40 Sup. Ct. Rep. 102, the Supreme Court held valid an ordinance requiring every street car to be operated by a conductor and a motorman.

The superintendent of a street railway company, the defendant in the cause, who had been arrested for violation of the ordinance, contended that the ordinance deprived the railway of its property without due process of law. But the Supreme Court held that the running of street cars is a matter that vitally concerns the safety of the people and therefore is well within the police power.

The defendant further contended, however, that even if the "one man car" was dangerous when it first appeared, that it has since been perfected by mechanical devices so as to be

absolutely safe. This contention was disputed by the municipal authorities and the Supreme Court after reviewing the evidence declared that it was not convinced that the new invention was so safe in its operations that the action of the municipal authorities could be said to be clearly arbitrary and conclusive.

While, as a general rule, every intendment is to be made in favor of the lawfulness of the exercise of municipal power in making regulations to promote the public health and safety, Dobbins v. Los Angeles, 195 U. S. 223, 235, yet it is also well settled that a valid regulative ordinance can be rendered invalid by a change of conditions which render it arbitrary and confiscatory. Lincoln Gas & Electric Light Co. v. Lincoln, 250 U. S. 256, 269; Municipal Gas Co. v. Commission, 225 N. Y. 89, 121 N. E. 772; Minnesota Rate Cases, 230 U. S. 352, 473, 48 L. R. A. (N. S.) 1151; Castle v. Mason, 91 Ohio St. 296, 110 N. E. 463, Ann. Cas. 1917A, 164; Perrin v. United States, 232 U. S. 478, 481, 34 Sup. Ct. 387. It is not unlikely that the "one man" car may be so improved and so safe that the ordinance which was held valid in the principal case may subsequently be regarded as invalid.

NON-PAR STOCK.

I take it that those of my readers who may be interested enough to read this paper on "Non-Par Stock," that is such, if any, of those who have not already thoroughly familiarized themselves with the various advantages, alleged in favor of such non-par stock, will ask at the outset: "What are the real differences, the fundamental differences, between the form of issuing stock with which we are familiar and that of the 'non-par' type?"

The answer is just as directly to the point as is the question. The real, the fundamental difference between the two is that, whereas for many years past, we have always been familiar with a showing upon a certificate for shares of stock that par, sometimes called the face, value, is either so many cents or dollars as the case might be; in the "non-par" type the certificates themselves bear the statement that the total authorized issue, for the particular company, is a certain number of shares, without nominal or par value, and the particular certificate shows that the holder thereof is the owner of so many shares of the total number of shares; and in jurisdictions where provision has been made for the forming of corporations issuing "non-par stock" the same can be issued as fully paid and non-assessable shares, just as in the case of the shares we are more familiar with; and in all those jurisdictions where there is either a primary or secondary statutory liability of stockholders for the corporation's debts it will be seen presently that the acquisition of the so-called non-par stock is very highly commendable, as opposed to the acquisition of any kind of par value stock, as to which transaction by any means of financial legerdemain, or "minutes of the meeting tactics," the par value stock is originally acquired for less in value than its actual face value, as stated.

According to the latest information available to the writer, as to jurisdictional recognition of companies issuing the so-called non-par stock, these figures including the month of December last past, the following twelve states have now enacted non-par stock corporation laws, to-wit: Alabama, California, Delaware, Illinois, Maine, Maryland, New Hampshire, New York, Pennsylvania, Virginia, Wisconsin and Ohio; and the only states in this nation in which a corporation having shares without par value cannot secure a license as a foreign corporation to transact business are Missouri, Washington and New Mexico.

As to the different types under discussion, and using the term "capital stock" in the usually accepted meaning of the same, we see as to the old, familiar form of stock certificate, that it represents so many shares of, we will say, par value of $100 each, in a corporation having an authorized capital stock issue of $100,000. A part of the history of our stock mar-

ket, the fake promotions, gigantic swindles, panics and our eras of depression are surely convincing of the fact that the ordinary purchaser of the character of stock available to the ordinary purchaser attaches some financial import to the stated value of stock certificates that he buys; that it has, in hundreds of thousands of stock sales transactions, meant something to the purchaser that the certificate has shown that he has "one hundred shares" of stock of the par value of "one hundred dollars each," in a corporation of "one million dollars;" that such purchaser, altogether too often and without any actual or contingent foundation therefor, has allowed to be conjured up before him the belief that some day, somehow, a purchaser will appear for that stock, taken in by him at a figure considerably below par value, and who will deal with him for the same on the basis of par. Granted that such a condition could not often or unwisely exist with the readers of this article, nevertheless it has been the experience of each of us, in hundreds of cases to some of us, that parties coming to us seeking possible relief, if any, as purchasers of worthless stock, have shown us by their unfolding of the scheme, wherein they had become prey of the unscrupulous stock dealer, that they have been misled and duped by the figures and statements of value appearing upon the stock certificates. To many purchasers that one familiar stock certificate feature has meant disaster in varying degrees.

All and everything that any certificate for a certain number of the shares of the capital stock of any corporation can mean is that the owner and holder of that certificate has his proportionate interest, as represented by his shares, in comparison with the whole, in the assets of the corporation. It is easy, with a mere reference thereto, to pass by the various practices indulged in: on the one hand, by stock promoters of the "get-rich-quick" kind, or, on the other hand, conditions brought into being by successions of misfortunes, or yet another view of greatly enhanced values brought about by rich strikes or peculiar advantages gained in business ways, any of which makes the actual value of the corporation's assets a very different thing indeed from the capitalization named and authorized, and which by most investors, as that term is commonly applied, is taken to mean the actual value of the corporation. We know that when the value of a company's holdings, or its general business status, or both, advance, the value per share of the stock therein, in normal times, increases proportionately, according to the demand for investment, and that, on the contrary, when the value of the holdings are diminished, whether by mismanagement or by actual depletion or depreciation in the assets held by the company, the shares of stock properly likewise recede in value. In the case of a sale of a certificate for shares of non-par stock in such a company, under any of such circumstances the purchaser is naturally put upon his inquiry, to ascertain what fair value, if any, the proportionate interest in the total assets sought to be marketed to him has, and is in no sense lulled into a sense of security by the dollar mark upon the certificate of shares, as a soothing potion.

The writer understands that the State of New York paved the way in 1912, when it enacted statutes authorizing corporations, excepting those under the jurisdiction of the Public Service Commission, and money corporations, to be formed without any par value for the stock. That law provided, however, that the certificate of incorporation could provide for any number of shares desired, as having a preference over the other or common shares, as to the principal, and in such case provided that the certificate of incorporation must state the amount of such preferred stock and the character of the preference, which shall be as to each such share $5, or some multiple thereof, up to $100, but no more. Also, provision was made that the certificate of incor-

poration must state the amount of capital with which the corporation will carry on its business which amount, in no event, may be less than the amount of preferred stock, if any, and in addition thereto "a sum equivalent to $5, or to some multiple for every share authorized to be issued, other than such preferred stock." The capital of such corporation to be not less than $500. Under such procedure these statements, in the certificate of incorporation, take the place of the usual statement, with which we are familiar, relative to the amount of the authorized capital stock, number of shares into which it is divided and the par value of each. The New York statutes also provided that such non-par shares of a corporation so organized may be sold for such consideration as is prescribed in the certificate of incorporation, or as the directors may determine under the authority of the certificate, or by consent of two-thirds of the holders of each class, preferred or common, of the shares outstanding and that all shares of such stock shall be deemed fully paid and non-assessable, and the holders of the same shall not be liable either to the corporation or to its creditors; and further provides that such corporation shall not begin business or incur any debts until the amount of capital stated in the certificate of incorporation shall have been fully paid, in money or in property at actual value, and places an organization tax on such shares without par value, at the rate of five cents per share.

Following closely upon the precedent of New York, were other enactments, by legislatures of the following states: Pennsylvania in 1913, Maryland 1916 and Delaware 1917. The law enacted by Pennsylvania was vetoed by the Governor. Thus the way was paved, until, as above stated, we now have twelve states authorizing organization of companies issuing such stock. Maryland made a little further progress than New York, by providing for one class of this stock preferred only as to dividends, and subject to redemption, and also as to a particular stock preferred as to a distributive share of the assets of the corporation, on its dissolution aside from the common stock, all of the non-par class. The general provision, as the writer has it to date, is that under the statutes of any of the various states now authorizing such an organization the corporation may dispose of its capital stock for such return to the corporation as it may deem sufficient, either in money, property or services.

Various states have different requirements as to organization fees, Delaware, for instance, assessing a charge of one cent for each share for all shares up to 20,000, and for all above that amount one-half of one cent per share, the minimum fee being $10.

It may be seen how rapidly the favorable idea is spreading when we understand that so new a proposition has been so broadly accepted that, now to reiterate, only three states are holding out against the permission of a foreign corporation issuing such stock to transact business within their confines. On June 21 1919, the State of Kansas stepped across the threshold and into "The House of Order" in this respect, in the case in our Supreme Court entitled "North American Petroleum Company, a corporation, plaintiff, vs. Richard J. Hopkins, Attorney-General of the State of Kansas, et al., defendants," said cause being in the nature of original mandamus proceedings, seeking to require the State Charter Board of the State of Kansas to make inquiry concerning a Delaware corporation which had made application for authorization to do business in the state in the usual form, with the exception that its certificate of incorporation provided for non-par value stock. Reported in advance sheet No. 1 to Volume 105, Kansas Report, the opinion of our own court is very interesting, in that it goes directly to the root of the contention of our State Charter Board that because the shares of the plaintiff company have no fixed or nominal value

it would be difficult for the state officials to determine the amount of annual fees that the corporation should pay, and that there would be no means of knowing what its capital stock is worth, without an examination of the company's assets. Answering that contention, the Court says:

"The problem of determining the solvency and bona fide capitalization of the plaintiff, presents no unusual difficulty. The fact that the shares of its stock have no nominal par value is of little consequence. Any prudent charter board in determining whether a foreign corporation is worthy of admission to do business in Kansas, would attach little importance to the nominal value of its shares of stock, even if they have a nominal value. As in all other cases, the charter board should concern itself earnestly to ascertain the genuine capital—those assets permanently devoted to the corporate business as a basis for its business credit, and upon which its hopes of profits is rationally founded. The 'lawfully issued capital' and 'capital stock' of such corporation are the assets that it devotes to the prosecution of its business. When the value of those assets is ascertained, the fee required to be paid by law can be based on that portion of the assets which the corporation proposes to 'invest and use in the exercise and enjoyment of its corporate privileges within the state.' The defendants contend that the plaintiff is not such an organization as is called a corporation in the constitution and the laws of this state. This contention is based on the same facts as are the other contentions just disposed of. The answer to this contention is, that corporations without capital stock, and without shares of stock are not new; they are as old as corporations themselves, and have existed in England and in this country for many years; our constitution recognizes them and we have laws for their control and government. The plaintiff can be admitted to do business in this state; and the defendants cannot refuse to make the inquiry concerning it, directed by § 2136 of the Gen. Statutes of 1915."

The writer has been largely limited, in gathering material for this paper, to the interesting data collated by attorneys for the plaintiff in the above recently decided case, and wishes to acknowledge his appreciation to those gentlemen for the articles made available by their work.

Many learned jurists and advocates have written and are now writing articles favorable to the non-par stock corporation. One of the most interesting of these, by Mr. Victor Morawetz, was contributed to the Harvard Law Review, Vol. 26, page 729, written shortly after the enactment of the New York statute upon this matter, in which he says:

"A joint-stock corporation necessarily must have some capital, and it must have shareholders; and, for obvious reason of policy, it is desirable that the amount of capital which a corporation must have before incurring indebtedness and which may not be impaired by the declaration of dividends, should be fixed definitely by its charter or articles of association. However, it is not necessary that the amount of capital should be fixed by reference to the nominal or par amount of the shares issued by the corporation, and it is not necessary that the shares should purport to represent specified sums of money contributed to the capital.

"The customary scheme of corporate organization, under which the capital of the corporation is supposed to be fixed by the nominal or par amount of its outstanding shares—and the shares are supposed to represent specified sums contributed to the capital—has not worked well in practice, except as applied to corporations like banking corporations whose business is to deal in money, credits and securities, and whose assets are kept in liquid form. In most cases, the capital, or a large part of the capital, of a corporation is invested permanently in fixed plant or machinery which cannot again be converted into cash, and whose value, in great measure, depends upon the profitableness of the company's business. For many years the custom has prevailed of issuing paid-up shares of such corporation in consideration of property taken at a valuation largely in excess of its money value. Under the laws of some of the states, neither the subscription nor the payment of the whole amount of the nominal share capital of a corporation is a condition precedent to its right to engage in business and to incur debts. In some cases corporations have even been authorized by law to issue their paid-up shares at a dis-

count, or, in other words, to disregard the statements in the charter and in the share certificates as to the amount of the company's capital and the amount of the several shares. Moreover, some corporations are formed to invest their capital in wasting properties, like mines, and to redistribute among their stockholders the proceeds of these properties without making a suitable reserve for depreciation. For these reasons the nominal amount of the capital of a corporation, other than a banking corporation, rarely indicates the amount of its actual capital, or the amount originally contributed by its shareholders.

"It often happens that a corporation having an established business finds itself in need of capital and desires to raise the required capital by selling additional shares at their market value. However, if the market value of the shares should be less than their nominal or par amount, the corporation would be precluded from raising money by selling shares, inasmuch as they could not be issued lawfully for less than their nominal or par amount, while, of course, no one would be willing to pay more than their actual or market value. The corporation thus would be forced to raise the required capital by borrowing and increasing its indebtedness, although it would be sound business policy, and in the interest of its creditors as well as its shareholders, to raise the needed capital by selling shares at their market value.

"To meet such a situation, and also to obviate the supposed evils of 'stock watering,' a statute was passed in New York for the creation of corporations with shares having no nominal or par value. A corporation formed under this statute must state in its certificate of incorporation the amount of capital with which it will carry on business, and it is prohibited from engaging in business or incurring debts until the stated amount of capital stock shall have been received by the corporation in money or in property at its actual value. However, the shares issued by the corporation would have no nominal or par value, and the corporation would be permitted to issue and sell them at their actual or market value.

"The policy of the New York statute is sound. It recognizes that shares in a corporation represent only aliquot interest in its capital whatever that may be, and that their nominal or par value is no indication of their actual value or of the actual capital of the corporation. It requires the amount of the actual capital of a corporation formed under the law to be stated in the certificate of incorporation, and imposes a severe penalty upon the directors in case of the creation of indebtedness before receiving the prescribed capital. Thus it furnishes to creditors and to the public generally a measure of protection greater than that furnished by the generally prevailing incorporation laws. At the same time it is in furtherance of sound business methods by enabling corporations to raise money by selling shares at their actual value instead of by borrowing or otherwise increasing their indebtedness."

Mr. Francis Lynde Stetson was the head of a special committee on Corporation Law of the New York State Bar Association in 1911, and again headed the same committee in 1912, the other members then being Victor Morawetz and Lewis Marshall. He was giving the application of a great legal mind to the matters presented to the non-par proposition, and after his report, made for his committee in 1911 to the New York State Bar Association, the then president of that association, Senator Elihu Root, expressed himself as follows:

"I should be very glad, if the association will permit me without leaving the chair, to make a confession of faith. I am warmly in favor of this proposed bill. I do not think there is any better rule to be applied to the affairs of life, to all the laws and practices which enter into government, than the rule of making them conform to the truth as we find it to be. If a law or a practice does not conform to the reality of things, it is false and it makes trouble, and you cannot prevent it making trouble. If conditions change so that laws or practices which at one time conformed to the affairs of life no longer conform to them, then the time has come to change the laws and practices. Application of that rule, simple, easy to apply, is the best solution of a large part of the questions that we discuss and discuss. I have been in the way of seeing the many misapprehensions that exist regarding the rights and duties of corporations in regard

to their stock, based upon the fact that its par value is fixed upon the stock and that a different value is fixed in the market. The people of the country, a large part of them, are continually doing wrong in their ideas about the rights and wrongs of the business which is conducted by corporations because of this false representation, a representation that is necessarily false as to the value of corporate assets, and I think the adoption of this plan of permitting corporations to refrain from making any representation at all about what their assets are worth affords a means of avoiding really very serious faults and very serious misunderstandings. I see no practical obstacles to putting the plan into effect, and I think it certainly is good sense and good morals."

Mr. Elihu Root has never yet been found pioneering along any unsound legal paths, and most assuredly would not give voice to the sentiment just expressed without a thorough insight into the problems involved in and and in genuine accord with the movement.

The scope of the statutes authorizing such incorporation varies about as broadly in the different states concerning which the writer has had the opportunity to make examination as do statutes generally upon other matters of incorporation pertaining to the par value stock corporation. For instance, in the State of Delaware there is no requirement that the certificate of incorporation name an amount of capital with which the corporation will carry on its business, which in other states is usually required and must be paid in before the company begins business or incurs indebtedness. Also, different states vary in liberality of the law as to the consideration for the issuance of the stock.

For the purpose of ascertaining and determining the amount of any charter fee, registration fee or franchise tax imposed by law upon the maximum amount of authorized capital stock, if a domestic corporation, or upon the maximum amount of the authorized capital stock that may be used in a particular jurisdiction, if the corporation be foreign and domesticated therein, and as well as for ascertaining and determining the amount of entrance fees to be paid by such corporation, seeking permission to transact business in another state, I believe that the majority of states, having enacted such laws, have provided that such non-par shares of stock, for the last above named purposes, and none other, shall be taken to be of the par value of $100 each.

Our present financial period seems to be one of stress and uncertainties, fears and distrust. With no price or value named on the certificates of stock, it naturally finds its proper price level, as does any other species of property not falsely bolstered up with fictitious value, and at least no purchaser is deceived by the blandishments of the lithographers, engravers and the printer's art; and boards of directors of corporations are relieved of the responsibility of placing a value upon the consideration moving to the company for the issue of its stock, equal to any par value.

In the report of the Railroad Securities Commission (Messrs. Hadley, Judson, Strauss, Fisher and Meyer), which was transmitted to Congress Dec. 8, 1911, it was said: "The issue of stock without par value offers special facilities for consolidation and reorganization. In case of reorganization the advantage of shares without par value is even more obvious. It is here that the necessity and justice of getting money from stockholders is greatest. It is here that the impossibility of getting them to pay par for new shares is more conspicuous."

Referring to the issuance of non-par stock in cases of reorganization, mergers or consolidation, another very interesting feature is presented, from the federal income tax angle. Article 1567, of Regulations No. 45, relating to the income tax

under the Revenue Act of 1918, relates to the exchange of stock for other stock of "no greater par or face value" in the case of reorganization, merger or consolidation. The original article has appended a statement relative to non-par value stock, to the effect that, if the stock so received as a result of the merger or consolidation of two corporations, has no nominal or par value, the limitation on the aggregate par value, would be inapplicable, as fixing the point wherefrom the new stock, received in exchange would be considered as income and so taxable. This article was amended by T. D. 2870, on June 20th, 1919, and further amended by T. D. 2924, on Sept. 26th, 1919. The first Treasury Decision, No. 2870, so amended said Article 1567, that, in case where two or more corporations unite their properties by the various methods of merger or consolidation, if non-par stock is issued under a statute which requires the corporation to fix in its certificate of incorporation, or its books of account, or otherwise, an amount of capital of the amount of stock issued, which may not be impaired by the distribution of dividends, such stock so taken in exchange will, for the purpose of said taxing section, be deemed to have a value representing an aliquot part of the amount fixed in said certificate of incorporation or books of account, proper account, of course, being taken of any preference stock issued. If, however, no such amount of capital stock is fixed in the corporation's certificate of incorporation, or upon its books of account, then the non-par stock, issued in exchange will be regarded for the purposes of said taxing section, as having in fact no par or face value, and consequently as having "no greater aggregate par or face value than the stock or securities exchanged therefor." The latter amendment, T. D. 2924, does not modify the provision hereinbefore discussed. All this relates back to § 202(B) of the Revenue Act of 1918, which seeks to establish the basis for determining gain or loss, relative to which the income act is applicable. The act specifies that on exchange of property for property, the property received in exchange shall, for the purpose of determining gain or loss, be treated as the equivalent of cash, to the amount of its fair market value, if any. This is followed in the law, by the exception relating to reorganization, merger or consolidation, which provides that in such cases, if a person (evidently meaning any person, company, concern or corporation), received in place of stock or securities owned by him, new stock or securities of no greater aggregate par or face value, no gain or loss occurs, the new securities being treated as taking the place of the stock securities or other properties exchanged.

As the matter now stands, these Treasury Decisions seem to rest on a narrow and instable ledge, as do many others, and to depend, for the purposes of ascertaining whether or not such shares of stock, taken in exchange, shall be taxable as income, in so far as they may be figured to be in excess in value of the stock trade for the same, upon whether or not any certain sum is set up upon the books of the non-par stock company, or in its certificates of incorporation, as being the amount of its capital stock required and necessary for its business.

The Treasury Department officials argue that the absence of any reference to stock of no-par or face value in said § 202(B), in connection with reorganization, mergers or consolidations, evidences the intention upon the part of Congress to limit the special provisions thereof to those reorganizations, mergers or consolidations, which did involve exchange of stock securities or properties for new stock securities or property of no greater actual or stated par or face value, *only*, and that any transactions involved in new stock or securities, having

in fact *no* face or par value, are to be treated as coming within the first provision of the sub-section of § 202(B), which provides, "When property is exchanged for other property, the property received in exchange shall, for the purpose of determining gain or loss, be treated as the equivalent of cash, to the amount of a fair market value, if any." The converse of this argument is, that when Congress wrote this provision into the law, it was well aware of the fact that several of the states (then there were but six states, although at present there are twelve), make statutory provision for the issuance of stock without par value.

As lawyers, the readers will have recognized ere this stage of this article, whether or not, upon such a presentation of the matter as I have been able to give, non-par stock corporations are fundamentally right, and to be desired over and above, or along with the familiar par value stock corporation; whether there be need for a change, either from the angle of your clientele or public protection; or, better still, if those two factors combine upon the demand. The subject, however, will receive from lawyers, as occasion may individually arise, their special attention, and it may be in time that common stock certificates, bearing a face or par value, will be wholly eliminated, either by preference of methods of issue, or by statutory prohibitions relative thereto. If the future general acceptance of this form of stock proves to do away with fraud, chicanery and deception, to an appreciable extent, in corporation matters, particularly in connection with the investing public, then it must needs be that the lawyers have recognized both the opportunity and the necessity, and have acted as is becoming to and should be expected of, the members of the Bar, representatives of a noble profession, which we strive to honor.

James A. Allen.

Chanute, Kans.

LANDLORD AND TENANT—PROPERTY IN MANURE.

STUART v. CLEMENTS.

Court of Appeals of Kentucky. Oct. 17, 1919. Rehearing Denied Dec. 19, 1919.

16 S. W. 130.

As between landlord and tenant, manure produced upon the premises is the property of the landlord, in which the tenant has no interest, and for removal or sale of which, without the lessor's consent, the tenant is liable, unless custom or usage of the neighborhood, known to the parties previous to the agreement, renders the contract otherwise.

THOMAS, J. The appellee and defendant below, Mrs. Charles Clements, was a tenant for the years 1915, 1916 and 1917 of the appellant and plaintiff below, Mrs. C. G. C. Stuart, who owned the leased farm, which is situated in Davies county, Ky. After the expiration of the tenancy, plaintiff filed this suit against defendant, seeking to recover of the latter the sum of $216, alleged to be the value of 36 loads of manure, 12 of which the defendant had sold from the leased premises, and 24 of which she had removed from the premises just before the expiration of the lease.

The first paragraph of the answer denied some legal conclusions alleged in the petition, as well as some facts not going to the merits of the case, and the second paragraph in substance stated that the manure was made by cattle exclusively owned by defendant, which had been fed with produce also owned by her, and it was therein insisted that these facts gave the defendant the right to dispose of the manure; but it was nowhere denied but that the produce fed to the cattle was grown upon the leased premises, although it was the property of the tenant, being his portion of the crop, supplemented by a small portion purchased from the landlord, which was also grown upon the premises.

The third paragraph relied upon a usage and custom prevailing in the neighborhood for many years, to the effect, as stated, "that, where the tenant furnished his own feedstuffs for live stock, the manure produced by such live stock so fed with feed belonging to the tenant became his personal property, with the right of removal or sale by such tenant." It was then alleged that the custom so relied upon "was well known to both plaintiff and defendant at the time the

contract for the rental of said farm was made and executed, and it was made in view of said custom."

A demurrer was filed to each of paragraphs 2 and 3, which the Court overruled, and, the plaintiff declining to plead further, her petition was dismissed, and complaining of that judgment she has filed the transcript in this Court, accompanied by a motion for an appeal.

The action of the court in overruling the demurrer to the second paragraph of the answer presents a question which, so far as we have been able to ascertain, has not heretofore been before this Court; but it has quite frequently been before the highest courts in other states and countries, and has received consideration by able text-writers upon the subject, and with but a single exception it has been held that, under the facts presented by the paragraph of the answer under consideration, as between landlord and tenant, manure produced upon the leased premises is the property of the landlord, in which the tenant has no interest, and for which he is liable if he removes or sells it without the consent of the lessor. 24 Cyc. 1067; Laswell v. Reed, 6 Me. (Greenl.) 222; Perry v. Carr, 44 N. H. 118; Daniels v. Pond, 21 Pick. (Mass.) 367, 32 Am. Dec. 269; Lewis v. Lyman, 22 Pick. (Mass.) 437; Conner v. Coffin, 22 N. H. 541; Plumer v. Plumer, 30 N. H. 558; Elting v. Palen, 60 Hun. 306, 14 N. Y. Supp. 607; Middlebrook v. Corwin, 15 Wend. (N. Y.) 169; Enoch Wetherbee v. Adolphus Ellison, 19 Vt. 379; Brigham v. Overstreet, 128 Ga. 447, 57 S. E. 487, 10 L. R. A. (N. S.) 452, 11 Ann. Cas. 75; Bonnell v. Allen, 53 Ind. 130; Gallagher et al. v. Shipley, 24 Md. 418, 87 Am. Dec. 611; 19 Amer. & Eng. Ency. 927; Taylor's Landlord and Tenant, §§ 541 and 693; Pickering v. Moore, 67 N. H. 533, 32 Atl. 828, 31 L. R. A. 698, and annotations, 68 Am. St. Rep. 695; Brigham v. Overstreet, 128 Ga. 447, 57 S. E. 487, 10 L. R. A. (N. S.) 452, 11 Ann. Cas. 75; Munier v. Zachary, 138 Iowa, 219, 114 N. W. 525, 18 L. R. A. (N. S.) 572, and annotations, 16 Ann. Cas. 526; Washburn on Real Property, vol. 1, top page 609, and 16 R. C. L. pp. 754 and 755.

The general doctrine as announced by the above authorities is very succinctly stated in the volume of Cyc. referred to, thus:

"The general rule is that manure made by a tenant upon leased farm lands in the ordinary course of husbandry is, in the absence of special agreement to the contrary, the property of the lessor, and belongs to the farm as an incident necessary for its improvement and cultivation, and the tenant has no right to remove it from the premises or apply it to any other use. However manure made in livery stables, or in buildings unconnected with agricultural property, belongs to the tenant, unless there be a contract to the contrary; and it has been held that a tenant is entitled to manure made from fodder grown elsewhere and bought by him."

The reason underlying this principle of law which led the Courts to its adoption, is thus stated in the case of Lassell v. Reed, *supra*.

"It is our duty to regard and protect the interests of agriculture as well as trade. It is obviously true, as a general observation, that manure is essential on a farm, and that such manure is the product of the stock kept on such farm, and relied upon as annually to be appropriated to enrich the farm and render it productive. If, at the end of the year, or of the term, where the lease is for more than a year, the tenant may lawfully remove the manure which has been accumulated, the consequence will be the impoverishment of the farm for the ensuing year, or such a consequence must be prevented at an unexpected expense, occasioned by the conduct of the lessee, or else the farm, destitute of manure, must necessarily be leased at a reduced rent or unprofitably occupied by the owner."

Some of the cases hold to the rule as above stated absolutely, without regard to the fact of the feed consumed by the stock which produced manure having been grown on premises other than the one leased, while other cases held that, when the manure is produced from feed grown on other premises, it becomes the property of the tenant. However, we are not called upon to discuss this distinction, since in the instant case the feed, as we have seen, grew upon the leased premises from which the tenant claimed the right to remove it. In such case there has been but one dissent, so far as we have been able to discover, from the general rule; that being the case of Smithwick v. Ellison, 24 N. C. 326, 38 Am. Dec. 697. The cases, while announcing the rule as stated, confine its application to manure produced upon agricultural lands in the usual and ordinary course of husbandry. It has no application to accumulations of manure in livery stables and places other than agricultural premises. The reasoning of the Courts, as well as textwriters, in applying the doctrine to agricultural leases, commends itself as being sound, and we unhesitatingly adopt it as being the correct rule governing the rights of landlord and tenant in the character of leases referred to. The rule, however, is deducible from the mere fact of the relationship of landlord and tenant, and "in the absence of covenant or custom to the contrary." 16 R. C. L., *supra*.

In Taylor's Landlord and Tenant, § 542, speaking of the effect of a custom or usage of a neighborhood upon the general rule, it is said:

"There may be mutual privileges founded on the common usage of a neighborhood, to which outgoing and incoming tenants are entitled."

And all of the authorities are of one accord that it is competent for the parties to agree between themselves as to who shall have the right to the manure produced.

* * * * *

Judgment affirmed.

NOTE—*Right of Outgoing Tenant to Remove Manure.*—In Gallagher v. Shipley, 24 Md. 418, 87 Am. Dec. 611, the opinion goes upon the theory, that conceding that the rule is that a tenant of a farming lease has no right to remove from the premises, without an express stipulation to that effect, any manure made in whole or in part from produce of the land, yet this rule cannot apply to a lease of a corral or pen for herding cattle for slaughter, where the cattle are fed with provender from sources foreign to the land.

This rule was applied to manure accumulating in a livery stable. Daniels v. Pond, 21 Pick. 367, 32 Am. Dec. 269. The reason of the rule itself is thus stated by Shaw, C. J.: "The court are of opinion, that manure on a farm, occupied by a tenant at will or for years, in the ordinary course of husbandry, consisting of the collections from the stable and barnyard, or of composts formed by an admixture of these with soil or other substances, is by usage, practice, and the general understanding so attached to, and connected with the realty, that, in the absence of any express stipulation on the subject, an outgoing tenant has no right to remove the manure thus collected, or sell it to be removed."

In Pickering v. Moore, 67 N. H. 533, 32 Atl. 828, 31 L. R. A. 698, 68 Am. St. Rep. 695, it was said, that, even in a farm lease no rule of good husbandry requires a tenant to buy other fodder for consumption on the farm. If, in addition to the stock maintainable from its products, he keeps cattle for hire, and feeds them upon products procured by purchase, or raised by him on other lands, the landlord has no more legal or equitable interest in the manure so produced than he has in the fodder before it is consumed. It is not made in ordinary course of husbandry.

In Chase v. Wingate, 68 Me. 204, 28 Am. Rep. 36, by the rule in the encouragement of husbandry a mortgagee was held to have an interest in manure on the mortgaged premises.

In Bonnell v. Allen, 53 Ind. 130, it was held that upon land leased either for cultivation or as a dairy farm, manure made during tenancy cannot be removed by the tenant, where this was partly from products on the land and partly from food purchased by the tenant. The court did not consider the question of indistinguishable commingling, as it gave no heed to the contention that four-fifths of the food fed to the stock was bought by the tenant.

In Pickering v. Moore *supra* it was directly said: "The plaintiff (tenant) did not lose his property in the manure by intermixing it with the defendant's manure of the same quality and value without his consent. 'The intentional and innocent intermixture of property of substantially the same quality and value does not change the ownership.'" This is so if definitely it can be determined what proportion is contributed to the general mass.

In Brigham v. Overstreet, 128 Ga. 447, 57 S. E. 487, 10 L. R. A. (N. S.) 452, 11 Ann. Cas. 75, Fish, C. J., said the rule was a part of good husbandry as the manure tends to increase the productiveness of the land whereon it is produced. It applies as well to manure from perennial crops as from *fructus industriales.*

In Munnier v. Zachary, 138 Iowa 219, 114 N. W. 525, 18 L. R. A. (N. S.) 572, 16 Ann. Cas. 526, there was a question of the right of the tenant to remove straw from crops produced on the land. The lease provided that "No straw to be removed from the farm." In an action against the tenant for removing the straw he urged that "the plaintiff had no interest in the straw, except that it was to remain and be consumed on the farm, so that the remnants and rotten remains of the same would stay on the farm and serve to fertilize the same." The court held on the question of damage that this "would not evidently be the market value of the straw which defendant removed, but the detriment to the premise, by reason of the fact that the straw was thus removed."

As to right of tenant to remove straw, this right has been held in a number of cases. See Smith v. Boyle, 66 Neb. 823, 92 N. W. 1018, 103 Am. St. Rep. 745. In this last cited case it is not questioned but that straw is just as any other personal property which the tenant may take with him when he leaves, and he is given a reasonable time afterwards to do this.

But though straw may be useful or beneficial to the land there seems not to have grown up as a rule in good husbandry that it remain on the premises. C.

ITEMS OF PROFESSIONAL INTEREST.

MEETING OF THE ALABAMA STATE BAR ASSOCIATION.

The 43rd annual meeting of the Alabama State Bar Association will be held in the city of Birmingham on Friday, April 30th, and Saturday, May 1st, 1920.

Hon. Jno. C. Anderson, Chief Justice of the Supreme Court, will read a paper on "The Centennial of the Supreme Court of Alabama"; Hon. Wm. H. Samford, Associate Judge of the Court of Appeals, will read a paper on "Constitutional Government"; Hon. W. O. Mulkey will speak on "Our Judges in a Primary," and Mr. Travis Williams will read a paper entitled "Forcible Entry and Unlawful Detainer."

There will probably be other papers and discussions, but this is the extent of the announcement, which we are able to make at the present time.

CORPUS JURIS, VOLUME 17.

This new volume of a work now, by reason of the great variety of important subjects already covered, being much used by the courts, is among the most valuable of any of the volumes so far issued.

Volume 17 is practically the second volume on Criminal Law. Volume 16, already issued, contains the first part of this very thorough, exhaustive and valuable contribution to the science of the law. A very careful examination of the treatment of this very important subject compels us to say that there is no treatise that can compare with its exhaustiveness. It is practically an index to the authorities and the notes do not merely cite the cases but give a succinct outline of the facts and the opinion. In this respect the article on Criminal Law follows the plan adopted in treating all subjects in Cyc. and which has made this work so much more valuable than other encyclopedias. But this feature is especially valuable in a treatise on the Law of Crimes where careful differentiation of the facts in the application of any particular rule is so very important.

Few lawyers, we believe, realize that the subject of Custom and Usage is today one of the live subjects of the law. It takes 84 closely printed pages (equal to at least 170 pages of an ordinary text book) to treat this subject even in encyclopedic form in the new volume of Corpus Juris. The subject of Customs Duties covers 160 pages. The increase of our foreign trade has made this subject a very important one at this time.

The most important subject, completely treated in Volume 17 is the article on Damages, which covers 425 pages, a magnificent, accurate and exhaustive treatment of a subject to which the lawyer has frequent occasion to refer. The subject of "Death" and the liabilities growing out of the commission of acts resulting in death cover a range of 216 pages, by far the best treatise on this increasingly important subject.

The general workmanship, including typesetting, paper and binding, is of the highest standard of excellence, the thin paper used permitting a volume of 1,380 pages like Volume 17 to occupy one-third the shelf-room of an ordinary text book.

Published by American Law Book Company, New York.

HUMOR OF THE LAW.

Senator Sheppard at a recent address in Galveston touched on prohibition, during which he inserted the following:

"A colored woman lost her husband. He had long been a heavy drinker and a burden on the family, and she was so delighted to get rid of him that she decided to celebrate with the most elaborate burial her purse afforded.

"'Ah done want a swell coffin,' she told the undertaker, 'one of dem swell ones made of mahogany.'

"'Yes, mammy, and what kind of trimmin's do you want on it?' asked the undertaker.

"'Trimmin's! Man, Ah doan want no trimmin's. Dat's what he died of!'"

"I am very sorry, sir," the publisher said, "but I'm afraid we can't use your novel, though, as far as it goes, it is excellent."

"May I inquire your objections to it?" the author asked, in surprise, for hitherto his stories had been in great demand.

"Certainly," was the reply. "In your story there are only twenty-nine people killed by the hero, and he has but one affinity, and I have reliable information that Bookman Brothers are about to bring out one in which the hero kills thirty-one people, is elected on the Prohibition ticket and has two wives run away with him."

Judge—What was the cause of the rumpus?

Policeman—Well, you see, judge, this man here and that woman there are married—"

Judge—Yes, yes, I know; but what was the other cause?"—*Boston Transcript.*

The corn in a silo on Hennessy's place
Turned sour and "worked" (as is often the case).
The cow ate the corn, and the milk in the pail
That evening was flavored somewhat like Scotch ale.
When Hennessy drank some for supper, with bread,
He found that it suddenly went to his head,
So he cranked up his flivver, and, scorching through town,
Ran a couple of sheep and a constable down.
At all events, this was the gist of his tale,
That he told to the sheriff who put him in jail.
But the sheriff was sure that the yarn was a lie,
And so, gentle reader, am I!

—*J. J. Montague in St. Louis Post-Dispatch.*

WEEKLY DIGEST.

Weekly Digest of Important Opinions of the State Courts of Last Resort and of the Federal Courts.

Copy of Opinion in any case referred to in this digest may be procured by sending 25 cents to us or to the West Pub. Co., St. Paul, Minn.

1. **Accord and Satisfaction**—Acceptance of Check.—If creditor accepted a check with statement attached, reciting that check would be in full payment, settlement and satisfaction of any claim due creditor, and that nothing beyond the amount of the check should be due or payable until after certain contingencies eventuated, and if such contingencies never occurred, there was a full accord and satisfaction.—Frame v. Cassell, Ia., 175 N. W. 521.

2. **Account Stated**—Elements of.—To constitute an account stated, the statement rendered by the creditor must be agreed to by the debtor, and the amount must be fixed.—Locke v. Woodman, Mo., 216 S. W. 1006.

3. **Action**—Moot Case.—That equity case is "moot" in which no decree consistent with both pleadings and existing facts will benefit any party as against the other parties to the litigation.—U. S. v. Pan-American Commission, U. S. D. C. 261 Fed. 229.

4. **Adverse Possession**—Hostile Possession.—Five indispensible elements in "adverse possession" are that it must be hostile and under a claim of right, actual, open and notorious, exclusive and continuous.—Burcham v. Roach, Ind., 125 N. E. 463.

5.——Statutes of Limitation.—As a basis for title through adverse possession under statutes of limitation, "color of title" is that which has the semblance or appearance of title, but which is in fact no title, so that any instrument, however defective or imperfect, may be color of title.—Theisen v. Qualley, S. D., 175 N. W. 556.

6. **Banks and Banking**—Customer's Deposit.—A bank has the right to appropriate and apply a customer's deposit subject to his check to the satisfaction and discharge of any indebtedness due from him to the bank.—First State Bank v. Hunt, Okla., 185 Pac. 1089.

7.——Liquidation.—Under Acts Ala. 1911, p. 50, creating banking department of the state and authorizing the superintendent of banks to take possession and liquidate unsound banks, whether corporate or private, by collecting all debts due and claims belonging to the bank, or by selling pursuant to order of court all of the property of the bank, the superintendent of banks may under order of court dispose of, with the other property, the bank's right of action against directors for mismanagement.—Houghton v. Enslen, U. S. C. C. A., 261 Fed. 113.

8. **Bankruptcy**—Attorney's Lien.—Institution of bankruptcy proceedings did not invalidate attorney's lien on policies of bankrupt in attorney's possession.—In re Luber, U. S. D. C., 261 Fed. 221.

9.——Tortfeasor.—Unliquidated claims arising ex delicto are not provable in bankruptcy under Bankruptcy Act, § 63, stipulating what debts may be proved, despite § 17, as amended by Act Cong., Feb. 5, 1903, c. 487, § 5, though, if a tortfeasor obtains something of value, there may be a provable claim quasi ex contractu.—Schall v. Camors, U. S. S. C., 40 Sup. Ct. 135.

10. **Bills and Notes**—Indorser.—Under Negotiable Instruments Law (G. L. 2935), an indorser undertakes to pay only if the note is seasonably presented to the maker and the indorser is seasonably notified of the maker's default.—Grapes v. Willoughby, Vt., 108 Atl. 421.

11. **Brokers**—Bringing Parties Together.—To entitle a broker to his commission for obtaining a lender, he need not prove that he was present and personally introduced the lender to the property owner desiring the loan; it being sufficient that the broker's efforts directed to the particular transaction caused them to come together and so without any breach or cessation of activities in the progress of the business led to the consummation of the loan.—McCoy v. Zahn Corporation, Cal., 185 Pac. 1021.

12. **Carriers of Passengers**—Emergency. — Where a passenger is suddenly confronted by imminent danger, he cannot reasonably be expected to calculate chances or to deliberate upon the means of escape, and, if he acts as a man of ordinary prudence placed in similar circumstances, and in doing so makes an effort to escape injury, and is injured, the carrier is responsible for damages.—Yazoo & M. V. R. Co. v. Hill, Ark., 216 S. W. 1054.

13.——Guest.—Where an automobilist is gratuitously carrying a guest in his automobile, he must be mindful of the life and limb of his guest, and shall not unreasonably expose him to an additional peril, a guest only assuming the risks ordinarily arising from riding in an automobile when the machine is controlled and managed by a reasonably prudent man who will not, by his own want of due care, increase his danger or subject the guest to a newly created danger.—Roy v. Kirn, Mich., 175 N. W. 475.

14.——Relation of Passenger.—Where a person takes a position on the platform of a street railroad company and flags an approaching car to express his purpose of boarding it, and the motorman responds in the customary manner to the signal, the relation of passenger and carrier is established, and the carrier owes to such person that high degree of care to which a passenger is entitled.—Rice v. Michigan Ry. Co., Mich., 175 N. W. 454.

15. **Carriers of Goods**—Public Utility.—If a petroleum pipe line was constructed solely to carry oil for particular producers under strictly private contracts, and never was devoted by its owner to public use, that is, to carrying for the public, a state could not, by mere legislative fiat or any regulating order of a commission, convert it into a public utility or make its owner a common carrier.—Producers' Transp. Co. v. Railroad Commission of State of California, U. S. S. C., 40 Sup. Ct. 131.

16. **Chattel Mortgages**—Fictitious Name.—A mortgage of personalty made by the owner in a fictitious name and placed on record is not constructive notice to one dealing with the owner in his true name.—Windle v. Citizens' Nat. Bank, Mo., 216 S. W. 1020.

17.——Record Notice.—Chattel mortgage, recorded in wrong book, with no index, even if it should be considered void as against innocent purchaser, was valid as against purchaser with actual notice, who did not, until after purchase, discover defect in recordation, where mortgagee had done his duty in filing instrument for rec-

ord and paying recording fee.—Emerson-Brantingham Implement Co. v. Rogers, Mo., 216 S. W. 994.

18. **Conspiracy**—Independent Offense. — The offense of conspiracy to commit murder having been complete at the time of entering into the conspiracy, it was an independent offense, for which the parties could be prosecuted and punished, though the offense contemplated was not consummated.—King v. State, Tex., 216 S. W. 1091.

19. **Confusion of Goods**—Intent.—The rule that a person who mingles his goods with those of another forfeits his own goods, does not apply where the act of commingling was not done willfully, with a fraudulent or other improper intent or purpose.—Gonzales v. Ilfeld, N. M., 185 Pac. 1110.

20. **Contracts**—Ejusdem Generis. — Where general terms are followed by specific terms, the general terms are limited by the specific ones.—Park Bldg. Co. v. George P. Yost Fur Co., Mich., 175 N. W. 431.

21.——Forbearance.—Forbearance to sue on or extension of time for payment of a baseless demand is not sufficient consideration for a contract.—City Street Improvement Co. v. Pearson, Cal., 185 Pac. 962.

22.——Rescission.—To warrant rescission of contract of sale of stock upon ground of mistake, the mistake must have been mutual.—Ruil v. Hughlett, Md., 108 Atl. 477.

23.——Termination.—Written contract for removal and use by firm of all trash and garbage accumulating at hotel, so long as firm "handle satisfactory to the" hotel company, held lacking in mutuality, in that no time for performance was specified, and to be terminable at the will of either party.—Marion Hotel Co. v. Dickinson, Ark., 216 S. W. 1049.

24. **Conversion**—Real Estate and Personalty. —To work a conversion of real estate into personalty, there must be either a positive direction to sell, an absolute necessity to sell in order to execute a will, or such a blending of realty and personalty by the testator in his will as to clearly show that he intended to create a fund out of both real and personal estate, and to bequeath the same as money, but a bare power of sale, like a discretionary power, does not work a conversion until exercised.—In re Sanford's Estate, Ia., 175 N. W. 506.

25. **Corporations**—Consideration.—A defense of lack of consideration is not established, where it is shown that defendant received stock for which note in suit was given and that he had enjoyed the rights of a stockholder.—Bank of Valley City v. Lee, N. D., 175 N. W. 575.

26. **Criminal Law**—Accomplice.—The uncorroborated testimony of accomplices is sufficient in law to sustain conviction of an offense.—State v. Whaley, S. C., 101 S. E. 568.

27.——General Reputation.—Evidence of general reputation of accused is to be confined to the particular trait of character impugned in the alleged commission of the crime under investigation.—State v. Popa, Mont., 185 Pac. 1114.

28.——Opinion Evidence.—It is not competent for a nonprofessional witness to give his opinion as to whether a designated person was physically able to perform acts attributed to him by other witnesses, as the facts from which such inferences were drawn could have been readily stated.—State v. Henson, Kan., 185 Pac. 1059.

29.——Order of Employer.—The behest of an employer furnishes no excuse for the commission of an offense.—Cassi v. State, Tex., 216 S. W. 1099.

30.——Presumption of Sanity.—The law presumes that all men are sane, and, without evidence indicating a contrary state of mind, both court and jury are justified in acting upon such presumption, and, where the evidence shows the criminal act and indicates nothing as to the mental capacity of accused to commit it, a conviction is not only authorized, but should be had. —Thomson v. State, Fla., 83 So. 291.

31. **Death**—Damages. — Within constitutional limitations, statutes are the exclusive source and boundary of liability for damages for wrongful death and the remedy, and they may create the cause of action, define the period of its existence and the party by whom and the method in which it shall be enforced, and prescribe the measure of damages and the beneficiaries.—In re Murg, N. Y., N. E. 508, 227 N. Y. 264.

32. **Dedication**—Reservation. — Where the owner of a town site sold lots with reference to the plat which designated lands adjacent to the railway tracks as reserved for railway purposes, the owner on reconveyance of a portion of said land from the railway company is estopped, as against persons who bought lots on faith of the dedication, from putting the property to any other use than that for which it was reserved. —Nave v. City of Clarendon, Tex., 216 S. W. 1110.

33. **Deeds**—Covenant. — Where a delivered deed purporting to convey a fee-simple title to tract of land provided in granting clause that by accepting the deed the grantee agrees that he will not sell to any other person without first offering it to grantor for sum paid by grantee, and that if the grantor in writing refused to buy, the grantee might sell to anyone, such words were words of covenant and did not upon a condition subsequent create an estate.—Johnson v. Hobbs, Ga., 101 S. E. 583.

34.——Description of Property.—In determining the sufficiency of a description in a deed, whatever can be made certain is certain.—Zoeller v. Offer, Tex., 216 S. W. 1113.

35. **Divorce**—Cruel Treatment. — For a husband to falsely accuse his wife of adultery as demonstrated by the findings of the chancellor, is cruel and inhuman treatment, which is ground for divorce.—Eward v. Eward, Ind., 125 N. E. 468.

36. **Electricity**—Negligence.—Where a power company negligently permitted a wire to become uninsulated and to come in contact with the branches of a tree or another wire for such length of time as to have enabled it to have discovered, the defects in time to have prevented an injury, and the wires fell to the ground and injured one who subsequently came in contact therewith, the power company was liable, even though the wire was not down for more than a moment.—Meeker v. Union Electric Light & Power Co., Mo., 216 S. W. 923.

37. **Equity**—Laches.—Mere lapse of time is not sufficient to constitute laches.—Backus v. Backus, Mich., 175 N. W. 400.

38. **Executors and Administrators** — Reimbursement.—An executor, though acting in good faith, is not entitled to reimbursement out of the estate for his services, expenses, and attorney's fees, in an unsuccessful effort to sustain the will upon appeal, against a contest by the widow and sole heir on the ground that the will is void under the statute.—Minnesota Loan & Trust Co. v. Pettit, Minn., 175 N. W. 540.

39. **Explosives** — Contributory Negligence.— That the owner of houseboat burned by an explosion in a nearby factory communicating fire to it, had recently noticed and been annoyed by the fumes of gasoline on the water, and had planned to find a more agreeable place for the boat, does not as matter of law show him guilty of contributory negligence, but at most makes it a question for the jury.—Woods v. Chalmers Motor Co., Mich., 175 N. W. 449.

40. **False Imprisonment**—Probable Cause. — The want of probable cause for issuing a warrant is not essential to the right of recovery for false imprisonment; probable cause being immaterial, except as a matter of litigation.—Sands & Co. v. Norvell, Va., 101 S. E. 569.

41. **Forgery**—Indictment.—It is proper that an indictment for forgery should set out the material parts of the alleged forged instrument, that the court may be able to judge by inspection of the indictment whether from its terms the instrument is the subject of forgery.—Barker v. State, Fla., 83 So. 287.

42. **Fraud**—Burden of Proof.—In cases where fraud is the basis upon which relief is sought, the burden of proof is on plaintiff to establish the fraud.—Reid v. Hughlett, Md., 108 Atl. 477.

43.——False Representation.—A false representation, made by a party having no interest in the transaction to which the statement relates,

will not sustain an action for deceit, if he does not know that statements were false, and honestly intends to tell the truth.—Neelund v. Hansen, Minn., 175 N. W. 538.

44.——Half Truth.—Individuals dealing at arm's length must look out for themselves, and mere silence is not fraud where no duty is imposed upon one to speak, but a half truth spoken with the design of influencing the opposite party, where he has not equal means of knowledge, is in itself fraudulent.—Palmiter v. Hackett, Ore., 185 Pac. 1105.

45. **Good Will**—Secret Competition.—While good will will not be protected from the competition of a rival, and the mere fact that a near relative of the seller is interfering does not necessarily show that there has been a violation of a contract not to re-engage in business, yet if the business is carried on under another name as a blind, and it appears that the seller is connected with the competing concern, relief will be granted the buyer.—Chenoweth v. Hoey, Md., 108 Atl. 478.

46. **Highways**—Prescription.—The public may acquire the right to use land for a highway by prescription.—Schmidt v. Town of Battle Creek, Ia., 175 N. W. 517.

47. **Homicide**—Dying Declaration.—To render decedent's dying declarations admissible in a prosecution for homicide, decedent at the time of making them must have had a complete subjective conviction of his approaching dissolution, amounting to absolute certainty so far as his belief was concerned, although the period of actual survival is immaterial.—State v. Bordeleau, Me., 108 Atl. 464.

48.——Self-Defense.—Whether or not the persons involved in an affray had previously conspired to kill the other person fought with, the mere fact that they may have conspired to kill him if they were attacked on their part by him when acting inoffensively, did not debar them from the right of self-defense.—King v. State, Tex., 216 S. W. 1091.

49. **Husband and Wife**—Entirety. — Both at common law and under statute, a deed to husband and wife creates an estate in entirety in them, and the interest of neither is liable for debts of the other.—Traw v. Heydt, Mo., 216 S. W. 1009.

50.——Privileged Communication.—While declarations of one not a party to an action made in the absence of the party against whom introduced are ordinarily inadmissible, yet, in a wife's action for alienation of affections, declarations made by the husband to wife and third parties during the period his affections were being alienated, but not in presence of defendant, are admissible to show his mental attitude.—Kraeger v. Kraeger, Ind., 125 N. E. 484.

51. **Insurance**—Accident.—Where injury by one to another is not result of misconduct or provocation by injured person and is unforeseen by him, it is as to him an "accident" within an accident policy insuring him against bodily injuries effected through external, violent and accidental means.—General Accident, Fire & Life Assur. Corporation v. Hymer, Okla., 185 Pac. 1085.

52.——Accident.—An insurance policy clause providing that, where the accidental injury causing the loss or the loss itself results from freezing by insured while not engaged in his occupation, the recovery shall be restricted to one-eighth the usual amount, is valid.—Continental Casualty Co. v. Hardenbergh, Miss., 83 So. 278.

53.——Strict Construction.—Ambiguous provisions in an insurance policy providing for a forfeiture of assured's interest will be strictly construed against the insurer, and the rule applies to life policies as well as to accident, fire, and marine insurance.—Faris v. American Nat. Assur. Co., Cal., 185 Pac. 1035.

54. **Intoxicating Liquors**—Police Power. — The police power of a state over the liquor traffic is not limited to the power to prohibit the sale of intoxicating liquors, supported by a separate implied power to prohibit kindred non-intoxicating liquors, so far as necessary to make the prohibition of intoxicants effective, but is a single broad power, to make such laws by way of prohibition as may be required effectively to suppress the traffic in intoxicating liquors.—Jacob Ruppert v. Caffey, U. S. S. C., 40 Sup. Ct. 141.

55. **Joint Tenancy**—Execution Sale.—The execution sale of the interest of one of two joint tenants severs the joint tenancy and leaves the purchaser at the execution sale and the other joint tenant as tenants in common.—Hilborn v. Soale, Cal., 185 Pac. 982.

56. **Landlord and Tenant**—Month to Month.—A tenancy for an indefinite term with monthly rentals reserved creates a tenancy from month to month.—Roberts v. Second Judicial Dist. Court in and for Washoe County, Department 2, Nev., 185 Pac. 1067.

57.——Negligent Construction.—A person injured may maintain an action against both a lessee of property for the negligent use and against the lessor for the negligent construction of a fire escape forming a part of the building.—Marr v. Rowell, Cal., 185 Pac. 1000.

58.——Repairs.—The breach by the landlord of his contract to repair will not ordinarily entitle the lessee, his family, servants, or guests personally injured from a defect due to failure to repair, to recover indemnity for such injury, whether in contract or tort, since such damages are too remote.—Jordan v. Miller, N. C., 101 S. E. 550.

59. **Libel and Slander**—Special Damages.—Where the words employed in alleged libelous article, taken in their most natural and obvious sense, are defamatory per se, the person as to whom they are published is entitled to recover without alleging and proving special damages, in view of Rev. Laws 1910, § 4959.—Bratcher v. Gernert, Okla., 185 Pac. 1081.

60. **Marriage**—Annulment.—A marriage procured by fraud is voidable at the suit of the injured party, and courts having the jurisdiction of courts of equity, under their general powers to annul fraudulent contracts, have jurisdiction to annul a marriage on account of fraud.—Christlieb v. Christlieb, Ind., 125 N. E. 486.

61. **Master and Servant**—Course of Employment.—Death of workman due to being struck by a hammer thrown by a fellow servant as the result of a disagreement held to have been caused by an accident arising out of and in the course of his employment.—Mueller v. Klingman, Ind., 125 N. E. 464.

62.——Defective Appliance.—In an ordinary action for injury from use of a defective tool, not governed by Workmen's Compensation Act and similar statutes, employe assumes risk of injury in using tool, if it is a common and familiar one in his vocation, and if he is aware of its defective condition, and master is not liable for damages for injury. Ernst v. Chicago, Great Western R. Co., Kan., 185 Pac. 1053.

63.——Foreman's Direction.—Where the foreman told plaintiff, an ore dock workman, that a train was coming, and to remove a hose which plaintiff was using, and which extended over rail of a track, as it was plaintiff's duty to do, and which he did without direction when a train came in, and while moving hurriedly in the night time and in a mist, plaintiff made a misstep and fell, the foreman's direction was not negligent. —Hansen v. Duluth & I. R. R. Co., Minn., 175 N. W. 549.

64.——Safe Place.—Where artificial light is necessary to render safe the place where servant is required to work, the failure of the master to exercise ordinary care to provide such light renders him liable for consequent injuries.—Baldwin v. Hanley & Kinsella Coffee Co., Mo., 216 S. W. 998.

65.——Safety of Employe.—A master is not an insurer of an employer's safety, and is only required to exercise such care as an ordinarily prudent man would exercise under like circumstances.—Midland Valley R. Co. v. Graney, Okla., 185 Pac. 1088.

66. **Mechanic's Liens**—Description of Property.—Property described in mechanic's lien may be identified sufficiently by such a description of the building itself as will enable a person familiar with the locality to point it out as the only one corresponding with the description contained

in the lien.—Johnson v. Erickson, Mont., 185 Pac. 1116.

67. **Mortgages**—Discouraging Bidders. — The purchasers at sale under deed of trust discouraging bidding and thereby obtaining the property for a less amount commit a wrong against the holder of the equity of redemption, the advantage of which equity will not permit them to retain.—Hurst Automatic Switch & Signal Co. v. Trust Co. of St. Louis, Mo., 216 S. W. 954.

68. **Municipal Corporations**—Street Crossings. —A pedestrian, when approaching a street crossing, is not imperatively required to look both ways before stepping off the curb, but must exercise such reasonable care as the surroundings and circumstances require.—Benjamin v. McGraw, Mich., 175 N. W. 394.

69.——Principal and Agent.—Persons who manage business activities undertaken by municipalities for profit or for the accommodation of their citizens are not public officers, but business agents.—Rockhill Iron & Coal Co. v. City of Taunton, U. S. D. C., 261 Fed. 234.

70.——Revocation of License.—A municipality is not liable for damages sustained by reason of a wrongful revocation of a license or permit.—Roerig v. Houghton, Minn., 175 N. W. 542.

71. **Negligence**—Imputability.—A son's negligence in driving a loaded wagon is imputable to the father, riding on the load.—Vinton v. Plainfield Tp., Mich., 175 N. W. 403.

72.——Negligence per se.—Violation of a duty prescribed by statute or ordinance is negligence per se.—Lake Erie & W. R. Co. v. Douglas, Ind., 125 N. E. 474.

73. **Patents**—Laches. — A delay of four or five years after defendant's device was placed on the market held not such laches as barred a suit for infringement.—Aeolian Co. v. Schubert Piano Co., U. S. C. C. A., 261 Fed. 178.

74.——Non-User.—The validity of a patent is not affected by nonuser of the patented device, if it has utility, in the sense of being capable of successful mechanical operation. — Reed v. Hughes Tool Co., U. S. C. C. A., 261 Fed. 192.

75. **Principal and Agent** — Trustee. — An agent's duty is primarily to his principal, for whom he acts and to whom he must account; a trustee's duty is primarily to his cestui for whom he acts and to whom he must account, though his authority comes from another.—State ex rel. Kansas City Theological Seminary v. Ellison, Mo., 216 S. W. 967.

76. **Principal and Surety**—Surety for Hire.—Sureties not for hire are never held responsible beyond the clear and absolute terms and meanings of their undertakings, and presumptions of equity are never allowed to enlarge or in any degree change their legal obligations.—Crouch v. Parker, Ind., 125 N. E. 453.

77. **Rape**—Intent.—In order to constitute assault with intent to ravish, the defendant must have intended at the time to use all the force necessary to overcome any resistance his victim might offer.—State v. Eslick, Mo., 216 S. W. 974.

78. **Remainders** — Alienation.—A remainder, whether vested or contingent, is alienable.—McClure v. Baker, Mo., 216 S. W. 1018.

79. **Sales**—Apparent Ownership.—If a purchaser of chattels misrepresents his identity, passing under a false name, and induces a pretended sale to himself under the belief that such sale is to another, no title passes to him from the sellers which he can pass on to another, even an innocent purchaser, the sellers not suffering the loss on any ground that they conferred on the fraudulent buyer the apparent right of ownership.—Windle v. Citizens' Nat. Bank, Mo., 216 S. W. 1020.

80.——Implied Warranty.—The implied warranty of quality of brick is not destroyed by acceptance of the brick by the purchaser.—Sharp v. Brookhaven Pressed Brick & Mfg. Co., Miss., 83 So. 274.

81.——Place of Contract.—Where a person residing in one place makes a proposal to purchase property by letter to a person residing in another place, and such proposal is there accepted, the place of acceptance, and not the place of the proposal, is the place of the contract.—Nettles v. Gulf Fertilizer Co., Fla., 83 So. 298.

82.——Reasonable Time.—Where no time for delivery is fixed, the seller must make delivery within a reasonable time.—North Coast Lumber Co. v. Great Northern Lumber Co., Minn., 175 N. W. 547.

83.——Retention of Title.—Where a sales contract provided the seller or his assigns should retain title until the purchase price was fully paid, with right to retake possession, etc., the seller's assignee had a right of property on the article sold upon default of purchase price payments which sustained a replevin action.—Burrier v. Cunningham Piano Co., Md., 108 Atl. 492.

84.——Waiver of Damages.—Where the seller has breached contract as to time for delivery and the buyer offers to accept them and waive damages for previous delays on condition that goods be delivered on a specified day, such an offer of waiver is conditional waiver only and is not binding on buyer until condition has been complied with.—Bernhardt v. Federal Terra Cotta Co., Ga., 101 S. E. 588.

85. **Specific Performance**—Personal Services. —The provision of a contract requiring personal services by one of the parties cannot be specifically enforced.—Roller v. Weigle, D. C., 261 Fed. 250.

86. **Trade-Marks and Trade-Names**—Unfair Competition.—In determining the question of unfair competition in use of similar names, regard may be had to the fact that the commodity handled by the parties obtains no prestige from the name of the dealer or manufacturer.—Thompson Lumber Co. v. Thompson Yards, Inc., Minn., 175 N. W. 550.

87. **Trade Unions**—Agency.—The officers and members of a labor union were bound by the acts of its business agent within the scope of his authority as such.—Clarkson v. Laiblan, Mo., 216 S. W. 1029.

88. **Trusts**—Resulting Trust.—The doctrine that a resulting trust arises when a transfer of realty is made to one person and the consideration therefor is paid by another does not arise where the parties concerned are parent and child.—Rossiter v. Shulz, Cal., 185 Pac. 997.

89. **Vendor and Purchaser**—Rescission.—The mutual rescission of an executory contract to purchase lands does not conclusively presume an obligation to return the purchase price paid, since a mutual rescission implies a contract between the parties, and there may be, as a part of such contract, a waiver of return of price paid as a consideration of being relieved from the other obligations of such executory land contract.—Strang v. Person, Wash., 185 Pac. 944.

90. **Waters and Water Courses**—Franchise Contract.—Franchise contracts and contracts for the supply of water to a municipality in which the rates are fixed for the public service rendered are valid and binding between the parties. —In re Searsport Water Co., Me., 108 Atl. 452.

91.——Mutual Drainage.—Natural creek being so located that the water from the drainage district in question naturally drains into it, there is what may be deemed an inherent right to drain into the creek, since in every natural water course there is an easement for the benefit of all land which naturally drains into it.—Maben v. Olson, Ia., 175 N. W. 512.

92. **Wills**—Probate.—Though title to land does not pass by will till will is probated, on probate thereof, however long after testator's death, there being no limitation for probate, the will relates back, and conveys title as of the date of testator's death, except as against intervening innocent purchasers.—Jones v. Nichols, Mo., 216 S. W. 962.

93.——Undue Influence.—While the exercise of undue influence may be shown by indirect evidence, such evidence must do more than raise a suspicion, and must amount to proof of circumstances inconsistent with the claim that the will was the spontaneous act of the alleged testator.—In re Mauvais' Estate, Cal., 185 Pac. 987.

94. **Witnesses**—Cross-Examination. — A witness may be asked on cross-examination as to whether he has not pleaded guilty to different criminal charges, and this rule as to cross-examination for purposes of impeachment applies to an examination of a party who takes the stand on his own behalf, as well as to other witnesses, and it is not required that the record of conviction be introduced as the best evidence.—Moberg v. Scott, S. D., 175 N. W. 559.